

Gary Spraker

Honorable Gary Spraker
United States Bankruptcy Judge



Entered on Docket
June 05, 2019

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June 5, 2019*

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SHERIFF OF COUNTY OF SANTA CLARA

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In Re:

ANTHONY THOMAS and WENDI
THOMAS,

AT EMERALD, LLC,
Debtors.

Case No. BK-N-14-50333-gs (LEAD)

Case No. BK-N-14-50331-gs
(Jointly Administered)

Chapter 7

JERI COPPA-KNUDSON,

Plaintiff,

vs.

KENNETH CONETTO, ESTATE OF ERIC
KITCHEN, KIMBERLY KLOTZ, WAYNE
CATLETT and SHERIFF OF SANTA
CLARA COUNTY,

Defendants.

Adv. Proc. No. 17-05005-gs

**ORDER RE MOTION TO SET ASIDE
DEFAULT JUDGMENT OR FOR
CLARIFICATION**

Hearing Date: May 13, 2019
Hearing Time: 2:00 p.m.
Judge: Hon. Gary Spraker

On March 18, 2019, defendant Sheriff of County of Santa Clara (“County”) filed its Motion to Set Aside Default Judgment or for Clarification (Motion, Dkt. #30). No opposition was filed. The trustee/plaintiff (“Trustee”) filed a Stipulation to Declaratory Determination signed by defendant Kenneth Conetto (“Conetto”) on May 6, 2019 (Stipulation, Dkt. #43). The matter was called as scheduled on May 13, 2019, the Hon. Gary Spraker presiding. Phillip K. Wang, Esq. of Rimon PC, and Louis M. Bubala III, Esq., of Kaempfer Crowell appeared on behalf of the County. Jeffrey L. Hartman, Esq., of Hartman and Hartman appeared on behalf of the Trustee.

The Court having reviewed the papers and pleadings on file, being familiar with and taken judicial notice of the matters in the bankruptcy case, and considering the argument presented at the hearing and based on the record in this case, the findings of fact and conclusions of law set forth and stated on the record at the hearing pursuant to Bankruptcy Rules 9014 and 7052, and good cause appearing,

This adversary proceeding concerns the rights to what is known as the “Santa Clara Emerald,” currently in possession of the County. The Court finds that any error in the entry of default judgment in this adversary proceeding was harmless because (1) in the Stipulation filed by the Trustee, Conetto claims no interest in the Santa Clara Emerald, and Conetto agrees to entry of a declaratory determination that the bankruptcy estates of the jointly administered cases of Anthony and Wendi Thomas and AT Emerald, LLC, have exclusive title to the Santa Clara Emerald held by the County; and (2) the County claims no interest in the Santa Clara Emerald.

1 The Court further finds that the bankruptcy estates of the jointly administered cases of
 2 Anthony and Wendi Thomas and AT Emerald, LLC, have exclusive title to the Santa Clara
 3 Emerald currently in possession of the County.

4 **For all the foregoing reasons, the Court ORDERS** that the County's Motion is DENIED.

5 **The Court also ORDERS** the following instructions for turnover of the Santa Clara
 6 Emerald to the Trustee for the bankruptcy estates of the jointly administered cases of Anthony and
 7 Wendi Thomas and AT Emerald, LLC:

- 8 1. The County and Trustee shall coordinate a mutually agreeable date and time for the
 9 Trustee, or an authorized representative, to take physical possession of the Santa Clara
 10 Emerald.
- 11 2. The Trustee shall obtain physical possession of the Santa Clara Emerald from the
 12 County where it is currently stored or as otherwise designated by the County.
- 13 3. The Trustee shall present identification documents as required by the County and shall
 14 sign such documentation as required by the County to take physical possession of the
 15 Santa Clara Emerald.
- 16 4. All risk of loss of the Santa Clara Emerald shall pass to the Trustee upon Trustee taking
 17 physical possession of the Santa Clara Emerald.

18 **The Court further ORDERS** that before submitting this order to the Court for issuance,
 19 the County shall serve a copy of this proposed order on Conetto or his attorney, Dawna J. Cilluffo,
 20 Esq. (via e-mail to dawna@dclawcorp.com), and shall provide defendant Conetto with three
 21 business days to object to the proposed order in writing to the County and an additional two
 22 business days, if so desired, to file an objection with the Court as provided for under Local Rule
 23 9021(b).

24 **IT IS SO ORDERED.**

25 Prepared by: KAEMPFER CROWELL

26 /s/ Louis M. Bubala III
 27 Louis M. Bubala III, Esq.,
 28 Counsel for Sheriff of County of Santa Clara
 May 17, 2019

Local Rule 9021 Certification

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

☐ The court has waived the requirement set forth in LR 9021(b)(1).

☐ No party appeared at the hearing or filed an objection to the motion.

☒ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

Jeff Hartman, Plaintiff's Counsel Via E-mail, 5/17/19 **Approved/Disapproved/No Response**

Kenneth Conetto, Defendant Via Overnight 5/28/19 **Approved/Disapproved/No Response**
(FedEx Delivery 5/29/19) to
3637 Snell Avenue, Space 51
San Jose, CA 95136-1316

Kenneth Conetto, via his counsel Via E-mail, 5/28/19 **Approved/Disapproved/No Response**
Dawna J. Cilluffo, Esq. dawna@dclawcorp.com

☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

Submitted by:

KAEMPFER CROWELL

/s/ Louis M. Bubala III

Louis M. Bubala III, Esq.,
Counsel for Sheriff of County of Santa Clara
June 5, 2019

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